Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its undersigned counsel, hereby submits the following Reply Comments regarding the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board") released November 8, 1996 (hereinafter, "Board Recommendation"). In replying to the opening comments of other interested parties in this proceeding, PageNet hereby reaffirms each of the arguments it advanced in its initial Comments.

1. The Universal Service Assessment Should be Reflected as a Mandatory End User Charge

PageNet notes the widespread support among local exchange, interexchange and CMRS carriers alike for the proposition voiced in PageNet's initial Comments that universal service support assessments should be disclosed as a separate line item, or "surcharge," on the end user's bill. *See, e.g.*, Comments of Ameritech, at 30-31; AT&T, at 8-9; Bellsouth, at 15-16; MFS Communications, at 12-13; NYNEX, at 5,

23; Personal Communications Industry Association ("PCIA"), at 27-30; SBC Communications, Inc. ("SBC"), at 12-13; United State Telephone Association, at 22-23. Contrary to the Joint Board's intimation, the regulatory imposition of a mandatory surcharge to reflect this assessment on a pass-through basis is not prohibited by the 1996 Telecommunications Act (the "Act"). In addition, it fulfills the overarching requirements of the Act that universal service mechanisms be "specific" and "explicit."[1] Moreover, such a requirement would remove the assessment from becoming an artificial element of price competition, and would avoid discriminatory treatment of retail providers as compared to wholesale providers. *See* Recommended Decision, ¶ 808; Comments of PCIA, at 28-30. PageNet also concurs that separately identifying the universal service assessment as a surcharge would remove it from the carrier's revenue base and avoid the prospect of the carrier being "doubled taxed" on this assessment. *See* Comments of PCIA, at 28 n. 70.

2. Federal Universal Service Contributions Should be Linked to Carrier Eligibility for Support

The Comments of other interested parties in this proceeding give both explicit[2] and implicit support to PageNet's argument that carriers, which are not eligible

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[1] 47 U.S.C. § 254(d), (e).

[2] Comments of Arch Communications Group, Inc., at 4-5.

for universal service support payments like messaging providers, should be subjected to a reduced assessment formula for universal service contributions if such assessments are to meet the statutory requirement of being "equitable and nondiscriminatory."[3] As the Joint Board has acknowledged, "The appropriate revenue base for collecting support for the high cost and low income programs must be considered in tandem with the distribution of these funds." Recommended Decision, ¶ 821.

PageNet observed in its initial Comments (at 10-13) that messaging service providers are highly unlikely in the foreseeable future to have an opportunity to draw from the universal service fund, as the nature of services they provide do not fulfill each of the criteria for eligibility under section 214(e) of the Act identified by the Joint Board.[4] NYNEX has gone so far as to suggest that wireless carriers that claim eligibility for universal service support could face an "administrative problem" of convincing the Commission that they are providing "core" services to their customers. Comments of NYNEX, at 5.

In order for the Act's mandate that universal service mechanisms operate in an equitable and nondiscriminatory fashion to be realized, it is essential that the particular operational and technological limitations of messaging services be reflected in the manner

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[3] 47 U.S.C. § 254(d).

[4] Board Recommendation, ¶¶ 79-83, 134.

in which universal service contributions are assessed. To do otherwise would violate the Act's guiding principal of competitive neutrality in the implementation of section 254.[5] PageNet thus renews its proposal that messaging carriers be assessed for universal service support at an equitable rate -- perhaps at one-third to one-half of the rates assessed carriers that can draw support from the universal service pool. *See* PageNet Comments, at 12-13.

3. The Commission Exercises Plenary Jurisdiction Over CMRS Providers

In its initial Comments (at 5-9), PageNet demonstrated that the Joint Board erred as a matter of law in finding that section 332(c)(3) of the Communications Act[6] does not preclude states from assessing CMRS providers for state universal service support mechanisms. Board Recommendation, ¶ 791. No party participating in the initial round of comments in this proceeding has taken issue with PageNet's statutory analysis, while those parties who examined the relationship between the 1996 Act and the 1993 Budget

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[5] It is to be noted that NYNEX argues in its initial comments that universal service rate charges assessed by the Commission must permit the affected carrier to maintain its financial integrity and compensate its investors fairly for the risk they have taken, or the assessments will run afoul of Constitutional "taking" protections. Comments of NYNEX, at 21. Regardless of the potential Constitutional concerns posed by the Joint Board's Recommended Decision, it is clear that messaging services would be competitively disadvantaged by having to contribute to the universal service fund on a full-rate basis.

[6] 47 U.S.C. § 332(c)(3).

Reconciliation Act unanimously concur with PageNet's position. Comments of AirTouch Communications, at 27-30; Bell Atlantic NYNEX Mobile, at 5-9; Cellular Telecommunications Industry Association, at 1-16; PCIA, at 30-32.

In further confirmation of this statutory conclusion, Bell Atlantic NYNEX Mobile has brought to the Commission's attention a decision by the Superior Court of Connecticut holding that section 332(c)(3) of the Communications Act prohibits a state public utility commission from imposing state universal service payment obligations on CMRS providers unless and until they become a substantial substitute for landline services.[7] The court ruled, at 3:

> "By expressly exempting from preemption those assessment which are made on cellular providers in a state in which cellular service is a substitute for land line service, Congress left no ambiguity that cellular providers in states in which cellular is not a substitute for land line service fall under the umbrella of federal preemption."

Given the statutory language of section 332(c)(3), the same reasoning must apply to all other forms of CMRS providers, as well. This same conclusion is supported by section 601(c)(1) of the Act, which expressly preserves any provision of federal or state law not *expressly* amended or repealed by the Act.

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[7] *Metro Mobile CTS of Fairfield County v. Connecticut Dep't of Public Utility Control,* CV-95-0051275S (December 11, 1996).

Contrary to the Joint Board's conclusion, therefore, states may not assess CMRS providers for contributions to state universal service programs. CMRS providers may be assessed as a matter of law solely by the Commission at the federal level.

It is further noted in this regard that NYNEX has argued that, pursuant to section 2(b) of the Communications Act,[8] the Commission lacks authority to assess *federal* universal service contributions on interstate carriers' *intrastate* revenues. Comments of NYNEX, at 4-5, 12. PageNet does not concur with NYNEX's conclusion regarding the scope of the Commission's legal authority to assess universal service contributions under the 1996 Act. *See, e.g.,* Comments of Pacific Telesis Group, at 23-24. Regardless of how the Commission resolves this statutory issue, however, PageNet submits that the language of section 2(b) of the Act on which NYNEX relies expressly exempts from its scope section 332 governing CMRS operators.[9] Accordingly, the Commission's plenary and exclusive jurisdiction over CMRS operators for universal service purposes remains uncompromised.

4. The Commission Should Carefully Control the Scope of the Universal Service Fund

PageNet endorses the cautionary position advocated by PCIA in its opening Comments that the support mechanisms for universal service called for in

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[8] 47 U.S.C. § 152(b).

[9] *Id.*

section 254 of the Act must be "sufficient," yet need not be excessive. Comments of PCIA, at 4-14. By enacting a universal service program that is overly expansive and costly, the Commission might inadvertently overburden certain telecommunications services and, thereby, damage competition, the very opposite of what the Act's universal service principles are intended to achieve. *See also* Comments of AT&T, at 14; Sprint Spectrum L.P., at 2-4. This could be particularly deleterious to the messaging industry, where the demand for service is highly elastic, and the room for price increases on end users virtually non-existent.

Against this background, PageNet concurs that the Commission should adopt the Joint Board's recommendation that carrier reimbursements for high cost support be based on forward-looking, and not embedded, costs. Board Recommendation, ¶¶ 275-76. PageNet further agrees with the Joint Board's recommendation that universal service support should be limited as a general matter to

"services carried on a single connection to a subscriber's principle residence," rather than to multiple residential lines. *Id.*, ¶ 89.

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January 10, 1997

CERTIFICATE OF SERVICE

I, Michele A. Depasse, hereby certify that the foregoing *"Comments of Paging Network, Inc."* were sent, this 10th day of January 1997, by U.S. first class mail, postage prepaid, to the attached service list.

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